

MSS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 1455 OF 2007

JEETNARAYAN R. YADAV)
4/4 Jaggu Patel Chawl,)
Shri Krishna Nagar, Safedpool,)
Sakinaka, MUMBAI 400 072) .. PETITIONER

VERSUS

1. YADAV SANGH)
a registered trust & Society)
2. ACHAYBAN YADAV (Treasurer))
3. CHANDRA BAHADUR YADAV)
All having office at Yogiraj)
Shri Krishna Vidyalaya,)
Srikrishna Nagar, Safed Pool)
MUMBAI 400 072)
4. EDUCATION OFFICER, North Zone
Greater Bombay, Churchgate,)
MUMBAI 400 020)
5. DEPUTY DIRECTOR OF EDUCATION)
Jawahar Bal Bhavan, Mumbai)
6. STATE OF MAHARASHTRA)

Through the Secretary)
 Department of Education)
 Employment, Mantralaya Annexe
 MUMBAI 400 032.)

Mr. Mihir Desai for petitioner

Mr. C. G. Gavnekar with Sunil Singh for
 Respondent No. 1

Ms. S. M. Dandekar, AGP for Respondent Nos. 4 & 5

**CORAM: SWATANTER KUMAR, C.J. &
 SMT. RANJANA DESAI, J.**

DATE ON WHICH THE JUDGMENT IS
 RESERVED : 19TH JULY, 2007
 DATE ON WHICH THE JUDGMENT IS
 PRONOUNCED: 21ST AUGUST, 2007

JUDGMENT:- (Smt. Ranjana Desai, J.)

. The petitioner's case as disclosed in the petition is that he is working as assistant teacher in Yogiraj Shri Krishna Vidyalay which is a school fully aided by the State Government ("the said School", for convenience). According to the petitioner it is a secondary school managed and run by the 1st respondent trust. Respondent 3 has been given signing authority of the said school.

2. According to the petitioner he is fully

qualified to be appointed to the post of Headmaster in a secondary school. He completed his M.A. in 1991 and B. Ed. in 1993. On 12/6/93 he was appointed as Headmaster of the respondent school. His appointment was approved by the education department in 1996.

3. According to the petitioner prior to his appointment as the Headmaster one Mr. Vishwanath Yadav was working as the Headmaster of the said school. His services were terminated on 30/4/92. He challenged his termination in the School Tribunal at Mumbai. The petitioner was joined in the said petition as a party respondent.

4. In or about 2001, the termination order issued to Vishwanath Yadav was withdrawn and the School Tribunal disposed of the appeal. This would have affected the rights of the petitioner and, therefore, he challenged the said action by filing a writ petition in this court. On 25/6/04 an interim order was passed in the writ petition that since the said Vishwanath Yadav was due to retire shortly he would be allowed to work as Headmaster till his retirement and after his retirement while filling up the post of Headmaster, the management

will consider the claim of the petitioner, since the petitioner also satisfies all the requirements of eligibility. The order further states that if the claim of the petitioner was overlooked, it would be open to him to apply for appropriate ad-interim orders. The order further states that the management would not implement any such decision for a period of two weeks from the date of communication of such decision to the petitioner. On 31/7/06 the petition was disposed of in terms of interim order dated 23/6/2004.

5. It appears from the petition that from 24/6/04 the said Vishwanath Yadav took over as the Headmaster and the petitioner worked as the Assistant Teacher. On 31/1/05 Vishwanath Yadav retired. According to the petitioner from February, 2005 no full fledged Headmaster was appointed. On 28/2/07, the petitioner was given a letter appointing him as the Headmaster. This letter was signed by the Vice President. However, when the approval was sought from the education department, the education department refused approval on the ground that other trustees had raised objection. By a letter dated 28/6/07 the petitioner was informed that he cannot be appointed

as the Headmaster since he was not the senior most teacher.

6. According to the petitioner it is likely that some other teacher and most probably the 3rd respondent will be appointed as the Headmaster. The petitioner's case is that though respondent 3 was appointed prior to the petitioner, as per the seniority required under the Maharashtra Employees of Private Schools Rules ("MEPS Rules", for short) he is senior. He was full fledged Headmaster for 11 years and thus he belongs to A-Category in Schedule F. Thus, he must be treated as senior to the 3rd respondent as he was in category-A while the 3rd respondent was in C-Category.

7. According to the petitioner, he has learnt that out of 16 persons in the management, 14 had supported him but the Secretary and President unilaterally decided to appoint the 3rd respondent. It is against the background of the above facts that the petitioner has approached this court. The petitioner has prayed that the letter/order dated 28/6/2007 be set aside and direction be given to the first respondent to appoint the petitioner as the Headmaster of the said school.

8. We have heard Mr. Mihir Desai, the learned counsel appearing for the petitioner. He submitted that the said school is a minority school and, therefore, as per section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the said Act", for short), the provisions of the said Act are not applicable to it. He submitted that in any event, the petitioner is the senior most person in the said school. He was full fledged Headmaster for 11 years. He, therefore, falls in category "A" of Schedule "F". In the circumstances, none other than the petitioner can be appointed as the Headmaster. He submitted that, therefore, appropriate directions be given to respondent 1 to appoint the petitioner as the Headmaster.

9. The learned counsel for respondent 1 has, however, contended that the petitioner is not the senior most teacher. He has tendered in this court a seniority list of teachers for 2006-2007 in support of this contention. He submitted that the petitioner, therefore, cannot stake his claim to the Headmaster's post.

10. Under Rule 12 of the said Rules, every management has to prepare and maintain seniority list of the teaching staff including Headmaster and Assistant Headmaster and non-teaching staff in school in accordance with the guide-lines laid down in Schedule "F". Sub-Rule 2 requires the management to take into consideration objections, if any, to the seniority list. Sub-Rule 3 states that dispute, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision.

11. Though it is faintly suggested during arguments that the said school is a minority school, this point is not raised in the pleadings. As required by Rule 12(3) of the said Rules, disputes regarding inter se seniority will have to be referred to the Education Officer for his decision. It appears that the Education Officer has not considered the claim of the present petitioner. In the circumstances of the case, we feel that it would be necessary for the Education officer to consider the petitioner's case in accordance with law, if the petitioner submits a detailed representation to him. Hence, we pass the following order.

12. The petitioner shall address a detailed representation to the Education Officer setting out all facts and indicating on what basis he is staking his claim to the post of Headmaster to the said school. He shall do so within two weeks from today. If such a representation is received, the Education Officer shall hear all concerned and decide it in accordance with law within a period of two weeks from the date of receipt of the said representation. He shall pass a reasoned order thereon and communicate it to the petitioner. If the order passed thereon is adverse to the petitioner, it shall not be acted upon for two weeks from the date thereof. The petition is disposed of with the above directions.

CHIEF JUSTICE

SMT. RANJANA DESAI, J.